

Illinois Department of Employment Security  
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Date Mailed: 03/21/2019  
 Employer Account Number: [REDACTED]  
 Claimant SSN: [REDACTED]  
 Docket Number: 1906111  
 Appeal Filed Date: 02/28/2019  
 Date of Hearing: 03/20/2019  
 Type of Hearing: Telephone  
 Place of Hearing: Chicago

### Administrative Law Judge's Decision

(Este es un documento importante. Si usted necesita un intérprete, póngase en contacto con el Centro de Servicio al Reclamante al (800) 244-5631)

Claimant Appellant  
 DANIEL A. MORRISON  
 [REDACTED]  
 CARY, IL 60013-1341

Employer  
 ALGONQUIN TWP ROAD DISTRICT ALGONQUIN TWP  
 ROAD DISTRICT  
 3702 US HIGHWAY 14  
 CRYSTAL LAKE, IL 60014-8204

**Appearances/Issues/Employer Status:** The claimant and employer appeared and testified. The claimant was represented by an attorney. The employer was represented by an attorney. The issue is whether the claimant was discharged for misconduct connected with the work? See 820 ILCS 405/602A. The employer is a party to the appeal.

**Findings of Fact:** Claimant was employed as a laborer from 3/6/2017 through 1/11/2019, earning \$20.00 per hour when he was terminated. On or about the first week of January 2019, claimant was observed smoking in a loader. Employer's witness took a photo of claimant smoking in the loader, and testified claimant had a cigarette in his mouth and threw one at the him. Claimant admitted to smoking in the loader but stated this was not a vehicle. Claimant was aware of the policy regarding smoking in vehicles.

**Conclusion:** 820 ILCS 405/602A provides that an individual shall be ineligible for benefits for the weeks in which he has been discharged for misconduct connected with his work and, thereafter, until he has become re-employed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks. The term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.

The preponderance of the evidence established that the claimant willfully and deliberately violated employers policy by smoking in the loader. Employer's witness credibly testified that he observed claimant smoking while driving he loader and took a picture of him. Claimant was aware of employer's regarding smoking in a vehicle. Therefore, based on a preponderance of the evidence, claimant was discharged for misconduct connected to his work, and he is disqualified from receiving benefits under the general Section of 602A of the Act.

**Decision:** The Local Office Determination is AFFIRMED. Pursuant to 820 ILCS 405/602A, the claimant is not eligible for benefits from 01/13/2019.

JUDY M. MARTIN, Administrative Law Judge  
 Appeals - Chicago  
 Fax: (312) 338-6927

### FURTHER APPEAL RIGHTS

**A. LATE APPEAL:** If this appeal was dismissed without a scheduled hearing on a finding the appeal was not filed in a timely manner under the provisions of 56 Ill. Adm. Code 2720.207, this dismissal may be appealed to the Board of Review.